



# PROPOSED RULE MAKING

**CR-102 (June 2004)**

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Health

- ☒ Preproposal Statement of Inquiry was filed as WSR 05-22-125 ; or  
☐ Expedited Rule Making--Proposed notice was filed as WSR ; or  
☐ Proposal is exempt under RCW 34.05.310(4).

- ☒ Original Notice  
☐ Supplemental Notice to WSR  
☐ Continuance of WSR

**Title of rule and other identifying information: (Describe Subject)**

New chapter 246-16 WAC Standards of Professional Conduct, including WAC 246-16-010 Purpose of chapter; WAC 246-16-020 Definitions; and WAC 246-16-100 Sexual misconduct. The proposed rules establish clear and consistent definitions of sexual misconduct by health care practitioners regulated by the secretary. They also serve as model rules for professions regulated by other disciplining authorities.

**Hearing location(s):**

Department of Health  
Point Plaza East, Room 152  
310 Israel Road SE  
Tumwater, WA

**Submit written comments to:**

Name: Margaret Gilbert

Address:

Department of Health  
PO Box 47873  
Olympia, WA 98504-7873

Web site: <http://www3.doh.wa.gov/policyreview/>

fax: 360-236-4930 by (date) 08/22/2006

Date: August 23, 2006 Time: 2:00 p.m.

Date of intended adoption: 08/30/2006

(Note: This is NOT the effective date)

**Assistance for persons with disabilities:** Contact

Margaret Gilbert by 08/18/2006

TTY (800) 833-6388 or ( ) 711

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

The proposed rules will establish clear definitions for sexual misconduct by health care providers. The proposed rules are anticipated to help health care providers avoid sexual misconduct and to educate consumers about what they should expect from health care providers.

**Reasons supporting proposal:**

Currently, most professions have no definition for sexual misconduct, and those professions that have adopted rules have inconsistent definitions. The proposed rules will establish a clear and consistent definition of sexual misconduct and establish expectations for health care provider conduct. Executive Order 06-03, Investigation of Health Professional Sexual Misconduct, requires a comprehensive definition of sexual misconduct.

**Statutory authority for adoption:**

RCW 18.130.050(1) and (12)

**Statute being implemented:**

RCW 18.130.180 and RCW 18.130.160

**Is rule necessary because of a:**

Federal Law?

☐ Yes ☒ No

Federal Court Decision?

☐ Yes ☒ No

State Court Decision?

☐ Yes ☒ No

If yes, CITATION:

DATE

7/17/06

NAME (type or print)

Mary C. Selecky

SIGNATURE

TITLE

Secretary, Department of Health

**CODE REVISER USE ONLY**CODE REVISER'S OFFICE  
STATE OF WASHINGTON  
FILED

JUL 19 2006

TIME

1006

WSR

06-15-127

AM  
PM

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:  
none

Name of proponent: (person or organization)

Department of Health

☐ Private

☐ Public

☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting	Margaret Gilbert	Department of Health, PO Box 47873, Olympia, WA 98504-7873	360-236-4913
Implementation	Laurie Jenkins	Department of Health, PO Box 47850, Olympia, WA 98504-7850	360-236-4600
Enforcement	Laurie Jenkins	Department of Health, PO Box 47850, Olympia, WA 98504-7850	360-236-4600

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone:

fax:

e-mail:

☒ No. Explain why no statement was prepared.

DOH has reviewed the proposal and determined no SBEIS is required because the proposed rules do not impose more than minor costs on businesses within the industry.

Is a cost-benefit analysis required under RCW 34.05.328?

☒ Yes. A preliminary cost-benefit analysis may be obtained by contacting:

Name: Margaret Gilbert

Address:

Department of Health

PO Box 47873

Olympia WA 98504-7873

phone: 360-236-4913

fax: 360-236-4903

e-mail: Margaret.Gilbert@doh.wa.gov

☐ No. Please explain:

## Chapter 246-16 WAC

### STANDARDS OF PROFESSIONAL CONDUCT

#### NEW SECTION

**WAC 246-16-010 Purpose of chapter.** The rules in this chapter define certain acts of unprofessional conduct for health care providers under the jurisdiction of the secretary of the department of health as provided in RCW 18.130.040 (2)(a) including persons licensed or certified by the secretary under chapter 18.73 RCW or RCW 18.71.205. The rules also provide for sanctions. The secretary may adopt rules applicable to specific professions under RCW 18.130.040(2). These rules also serve as model rules for the disciplining authorities listed in RCW 18.130.040 (2)(b).

#### NEW SECTION

**WAC 246-16-020 Definitions.** (1) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(2) "Health care provider" means an individual applying for a credential or credentialed in a profession listed in RCW 18.130.040 (2)(a).

(3) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian and person authorized to make health care decisions of the patient or client.

(4) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients or clients, including palliative care, as consistent with community standards of practice for the profession. The activity must be within the scope of practice of the health care provider.

(5) "Patient" or "client" means an individual who receives health care from a health care provider.

## SEXUAL MISCONDUCT

### NEW SECTION

**WAC 246-16-100 Sexual misconduct.** (1) A health care provider shall not engage, or attempt to engage, in sexual misconduct with a current patient, client, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes but is not limited to:

- (a) Sexual intercourse;
- (b) Touching the breasts, genitals, anus or any sexualized body part except as consistent with accepted community standards of practice for examination, diagnosis and treatment and within the health care practitioner's scope of practice;
- (c) Rubbing against a patient or client or key party for sexual gratification;
- (d) Kissing;
- (e) Hugging, touching, fondling or caressing of a romantic or sexual nature;
- (f) Examination of or touching genitals without using gloves;
- (g) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;
- (h) Not providing the patient or client a gown or draping except as may be necessary in emergencies;
- (i) Dressing or undressing in the presence of the patient, client or key party;
- (j) Removing patient or client's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;
- (k) Encouraging masturbation or other sex act in the presence of the health care provider;
- (l) Masturbation or other sex act by the health care provider in the presence of the patient, client or key party;
- (m) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;
- (n) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;
- (o) Soliciting a date with a patient, client or key party;
- (p) Discussing the sexual history, preferences or fantasies of the health care provider;

(q) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(r) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(s) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;

(t) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for legitimate health care purposes; and

(u) Showing a patient, client or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) A health care provider shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient, client or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the health care provider's sexual needs.

(3) A health care provider shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section with a former patient, client or key party within two years after the provider-patient/client relationship ends.

(4) After the two-year period of time described in subsection (3) of this section, a health care provider shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section if:

(a) There is a significant likelihood that the patient, client or key party will seek or require additional services from the health care provider; or

(b) There is an imbalance of power, influence, opportunity and/or special knowledge of the professional relationship.

(5) When evaluating whether a health care provider is prohibited from engaging, or attempting to engage, in sexual misconduct, the secretary will consider factors, including but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

(b) Transfer of care to another health care provider;

(c) Duration of the provider-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient or client;

(e) Communication between the health care provider and the patient or client between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the health care provider;

(g) Nature of the patient or client's health condition during and since the professional relationship;

(h) The patient or client's emotional dependence and

vulnerability; and

(i) Normal revisit cycle for the profession and service.

(6) Patient, client or key party initiation or consent does not excuse or negate the health care provider's responsibility.

(7) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to that profession; or

(c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the health care provider where there is no evidence of, or potential for, exploiting the patient or client.